

AMENDED IN SENATE AUGUST 27, 1996

AMENDED IN SENATE AUGUST 5, 1996

AMENDED IN SENATE JULY 9, 1996

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AMENDED IN ASSEMBLY MAY 1, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 350

Introduced by Assembly Member Bustamante

February 10, 1995

An act to add and repeal Article 7 (commencing with Section 2105) of Chapter 1.5 of Division 3 of the Fish and Game Code, relating to endangered and threatened species.

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Bustamante. Endangered and threatened species.

(1) Existing law does not provide for a recovery strategy program relating to threatened or endangered species.

This bill would require the Department of Fish and Game to develop and implement a recovery strategy pilot program until January 1, 2004. The bill would require the Fish and Game Commission to identify 5 species on either the list of threatened or endangered species for which recovery strategies are to be developed and would authorize the commission to identify one or more species added to those lists after January 1, 1995, based on specified factors. The bill would

require the department to assemble a recovery strategy team for each species identified to aid in the development of the recovery strategy for that species. The bill would require the recovery strategy to be approved by the commission at a noticed hearing. The bill would require the department to adopt rules and guidelines to implement the policies of the department in implementing the recovery strategies. The bill would require the department to report annually on the status and progress of the implementation of the recovery strategies.

(2) Existing law requires the department to pay the costs of administration of the California Endangered Species Act from the continuously appropriated Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

This bill would provide that the provisions described in (1) would become operative only if funds are appropriated by the annual budget bill or another statute to fund the cost of implementing the bill and that the continuous appropriation to pay the costs of the administration of the California Endangered Species Act does not apply to any costs relating to those provisions of the bill.

The bill would repeal the provisions described in (1) on January 1, 2004, except that the repeal would not apply to any recovery strategy approved or implemented on or before that date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7 (commencing with Section
2 2105) is added to Chapter 1.5 of Division 3 of the Fish and
3 Game Code, to read:

4

5 Article 7. Recovery Strategy Pilot Program

6

7 2105. The department shall develop and implement
8 a recovery strategy pilot program. ~~The objectives of this~~
9 ~~pilot program are as follows:~~



1 ~~(a) The objective of this pilot program is the~~
2 development of recovery strategies with the goal that the
3 regulations or other protections for species listed
4 pursuant to this chapter are no longer necessary.

5 ~~(b) Identification of efficient planning procedures.~~

6 2106. On or before January 1, 1997, the commission,
7 based on recommendations from the department, shall
8 identify five species that are listed as either threatened
9 species or endangered species for which recovery
10 strategies shall be developed and implemented. The
11 commission may also identify one or more species for
12 inclusion in the recovery strategy pilot program that are
13 added after January 1, 1995, to the list of threatened
14 species or the list of endangered species pursuant to
15 Section 2075.5.

16 2106.5. In determining the species to be identified in
17 the recovery strategy pilot program pursuant to Section
18 2106, the commission shall consider the following factors:

19 (a) The intensity and immediacy of the threat facing
20 the species.

21 (b) Whether recovery strategy planning for the
22 species would provide benefits for multiple species.

23 (c) The extent to which landowners and other persons
24 affected by the regulation of the species are willing to
25 participate in the recovery strategy planning.

26 (d) Whether the species is already the subject of a
27 recovery plan prepared by the federal government.

28 (e) The public and private costs of achieving recovery.

29 (f) The need to use recovery strategy planning for
30 different types of species under different circumstances
31 and in different regions of the state.

32 2107. (a) For each species identified by the
33 commission for the recovery strategy pilot program
34 pursuant to Section 2106, the department shall assemble
35 a recovery strategy team consisting of, but not limited to,
36 department personnel, other state agency personnel if
37 found by the department to be appropriate, federal
38 agency personnel to the extent permitted by federal law
39 if found by the department to be appropriate,
40 representatives of affected local governments,

1 representatives of affected landowners, and
2 representatives of environmental groups, *as well as*
3 *persons who possess scientific expertise.*

4 (b) Each recovery team shall work collaboratively to
5 aid the department in developing the recovery strategy
6 for that species for which the recovery team is assembled.

7 (c) The department shall consider information from
8 all persons likely to be affected by the implementation of
9 a recovery strategy and from persons knowledgeable in
10 those subject areas *pertinent to the species' recovery* in
11 developing the recovery strategy for each species. ~~For~~
12 ~~example, if the species addressed in the recovery strategy~~
13 ~~exist on land used for agriculture or if agricultural~~
14 ~~practices affect the species, the department shall consult~~
15 ~~with the county agricultural commissioner where the~~
16 ~~land is located and other agricultural experts to ensure~~
17 ~~that the recovery strategy, to the extent possible, will~~
18 ~~permit routine agricultural activities to be carried out~~
19 ~~with as little direct regulatory control as possible.~~

20 2109. (a) After identification of the five species to be
21 included in the recovery strategy pilot program pursuant
22 to Section 2105, the department shall promptly
23 commence preparation of a recovery strategy for each of
24 those species.

25 (b) Within 12 months of the identification of a species
26 included in the recovery strategy pilot program, the
27 department shall submit a recovery strategy for that
28 species to the commission for review and approval.

29 (c) A recovery strategy for a species shall contain all of
30 the following information:

31 (1) ~~A statement~~ *An explanation* of scientific
32 knowledge and assumptions regarding the biology,
33 habitat requirements, and threats to the existence of the
34 species.

35 (2) ~~A statement~~ *An explanation* of interim and
36 long-term recovery goals. The interim goals shall be
37 specifically stated. The long-term goals may be
38 specifically stated if the department determines that
39 adequate information exists to reasonably identify
40 long-term goals; if not, the strategy may contain general

1 long-term goals that will be clarified as the recovery
2 strategy is updated pursuant to paragraph (7).

3 ~~(3) A description of the conservation and~~
4 ~~management activities that may be necessary to achieve~~
5 ~~the interim and long-term recovery goals. The~~
6 ~~department shall consider a range of alternative~~
7 ~~conservation and management activities and shall report~~

8 (3) A range of alternative interim and long-term
9 conservation and management goals and activities. The
10 department shall report why it prefers the activities it
11 recommends.

12 (4) An estimate of the time and costs required to meet
13 the interim recovery goals for the species, including
14 available or anticipated funding sources, and an initial
15 projection of the time and costs associated with meeting
16 final recovery goals. These costs shall include direct and
17 indirect costs and public and private costs.

18 (5) A description of actions and recommendations,
19 including ~~deregulation incentives and objectives~~
20 *voluntary incentives and objective criteria for delisting*
21 *and deregulation*, that will be needed to minimize the
22 adverse social and economic impacts of implementation
23 of the recovery strategy and a discussion of the range of
24 recovery alternatives considered in the strategy.

25 (6) A description of the following elements necessary
26 to achieve the goals of the recovery strategy:

27 (A) The *availability and* use of public lands for the
28 conservation, protection, restoration, and enhancement
29 of the species.

30 (B) Methods of private and public cooperation.

31 (C) Procedures and programs for notice, education,
32 ~~and research.~~ *research, monitoring, and strategy*
33 *modification.*

34 (7) The expected time necessary to meet the interim
35 recovery goals and provisions and triggers for review and
36 amendment of the strategy. If final recovery goals are not
37 specifically stated, the strategy shall contain a timetable
38 for an update of the plan to clarify the long-term goals.

39 (8) Objective measurable criteria by which to
40 determine whether the goals and objectives of the

1 recovery strategy are being met and procedures for
2 recognition of successful recovery and downlisting or
3 delisting.

4 (9) An implementation schedule.

5 2110. If the department determines, based on the best
6 scientific evidence available, that the recovery strategy
7 should also contain specifications regarding allowable
8 taking of the species and guidelines for consultation, the
9 recommended recovery strategy shall also contain
10 general policies to guide the department's issuance of
11 memoranda of understanding pursuant to Section 2081,
12 permits pursuant to Section 2081.4, and the department's
13 consultation procedures to be followed pursuant to
14 Section 2090. The general policies shall be consistent with
15 the recommended recovery strategy.

16 2111. After the department submits the recovery
17 strategy to the commission, the commission shall hold a
18 public hearing to consider approval of the recovery
19 strategy. The commission shall approve the recovery
20 strategy if, considering all relevant evidence, the
21 commission finds that the recovery strategy meets all of
22 the following criteria:

23 (a) The recovery strategy would conserve, protect,
24 restore, and enhance the species.

25 (b) The recovery strategy and implementation
26 schedule are capable of being carried out in a
27 scientifically, technologically, and economically
28 reasonable manner.

29 (c) The recovery strategy is supported by the best
30 available scientific data.

31 (d) The recovery strategy represents an equitable
32 apportionment of both public and private and regulatory
33 and nonregulatory obligations.

34 2111.5. If the commission does not ~~adopt~~^{approve} the
35 recovery strategy pursuant to Section 2111 because it
36 could not make all of the necessary findings, it shall
37 specify why the required finding could not be made. If
38 the commission determines that the strategy could be
39 amended to address the issues identified by the
40 commission, it may direct the department to revise the

1 recovery strategy within six months and resubmit it to the
2 commission.

3 2112. If a recovery strategy for one of the species
4 identified pursuant to Section 2106 includes policies to
5 guide the department's issuance of memoranda of
6 understanding pursuant to Section 2081, permits
7 pursuant to Section 2081.4, and the department's
8 consultation procedures pursuant to Section 2090, the
9 department shall develop and adopt rules and guidelines
10 to implement those policies. The rules and guidelines
11 shall be based upon the best available scientific evidence
12 and shall be consistent with the recovery strategy
13 adopted. The rules and guidelines may clearly specify
14 conditions and circumstances under which the taking of
15 a species listed as a threatened species or endangered
16 species would *be prohibited by the department, or,*
17 *conversely, when it would* not require a permit pursuant
18 to Section 2081.4 or a memorandum of understanding
19 pursuant to Section 2081.

20 2113. After approval of a recovery strategy by the
21 commission, the department shall consult with the
22 recovery strategy team assembled for that species
23 pursuant to Section 2107 and report to the commission on
24 an annual basis on the status and progress of the
25 implementation of the recovery strategy. The strategy
26 shall be the basis for the species reviews pursuant to
27 Section 2077.

28 2114. If the commission elects to authorize the
29 preparation of a recovery strategy prior to or in
30 conjunction with a decision to add a species to a list
31 pursuant to Section 2075.5, the required rulemaking
32 pursuant to subdivision (b) of that section shall be
33 delayed *not more than one year; which the commission*
34 *may extend for not more than an additional six months,*
35 until a final determination is made on the recovery
36 strategy. The rulemaking proceedings shall include all
37 policies, rules, or guidelines adopted pursuant to Sections
38 2111 and 2112 and shall consider the recovery strategy
39 and information received in its development and
40 adoption. The recovery strategy itself shall have no

1 regulatory significance, shall not be considered to be a
2 regulation for any purpose, including the rulemaking
3 provisions of Chapter 3.5 (commencing with Section
4 11340) of Division 3 of Title 2 of the Government Code,
5 and is not a regulatory action or document.

6 2115. This article shall become operative only if funds
7 are appropriated in the annual Budget Bill or another
8 statute to fund the cost of implementing this article.
9 Section 2098 does not apply to any costs relating to this
10 article.

11 2116. This article shall remain in effect only until
12 January 1, 2004, and as of that date is repealed, unless a
13 later enacted statute, which is enacted before January 1,
14 2004, deletes or extends that date. *However, this section*
15 *does not apply to a recovery strategy that is approved or*
16 *implemented pursuant to this article on or before January*
17 *1, 2004, and those recovery strategies, and any permits or*
18 *memoranda of understanding relating thereto, shall*
19 *remain effective as if this article had not been repealed.*

20 SEC. 2. *For purposes of implementing subdivision (c)*
21 *of Section 2107 of the Fish and Game Code, it is the intent*
22 *of the Legislature that, for example, if the species*
23 *addressed in the recovery strategy exist on land used for*
24 *agriculture or if agricultural practices affect the species,*
25 *the Department of Fish and Game consult with the*
26 *county agricultural commissioner where the land is*
27 *located and other agricultural experts to ensure that the*
28 *recovery strategy, to the extent possible, will permit*
29 *routine agricultural activities to be carried out with as*
30 *little direct regulatory control as possible.*

